

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES BRYANT, *et al.*,

Plaintiffs,

v.

AMERICAN SEAFOODS COMPANY, LLC,
et al.,

Defendants.

CASE NO. C07-740RSM

ORDER DENYING DEFENDANT
TRIDENT SEAFOODS' MOTION
FOR ATTORNEY'S FEES RE
INDEMNITY AGREEMENT

I. INTRODUCTION

This matter comes before the Court on defendant Trident Seafoods' Motion For Attorney's Fees Re Indemnity Agreement. (Dkt. #126). On September 19, 2007, this Court dismissed plaintiffs' claims for lack of jurisdiction, including plaintiff Steven Kelley's claims against defendant Trident Seafoods. (Dkt. #118). Defendant now moves the Court to order plaintiff, Steven Kelley to compensate defendant for its reasonable attorneys' fees and costs related to this matter. Defendant argues that an indemnity agreement signed by plaintiff in a separate lawsuit precluded plaintiff from asserting any further claims against defendant. Plaintiff responds that the indemnity agreement did not apply to this lawsuit pursuant to the plain language of the agreement.

For the reasons mentioned below, the Court agrees with plaintiff, and DENIES

1 defendant's Motion For Attorney's Fees Re Indemnity Agreement.

2 II. DISCUSSION

3 **A. Background**

4 On April 20, 2007, plaintiff Steven Kelley signed a "General Release and Indemnity
5 Agreement" ("Indemnity Agreement") to settle a personal injury lawsuit with defendant
6 Trident Seafoods.¹ Under the terms of the Indemnity Agreement, plaintiff agreed to release
7 defendant from liability. Specifically, Section V of the Indemnity Agreement provides:

8 **Indemnity Agreement:** I, STEVEN KELLEY, hereby agree to fully indemnify,
9 defend and hold harmless [defendant] against any claim or cause of action, which in
10 any way directly or indirectly arises from the OCCURRENCES that may be brought
11 by any person or entity against [defendant]. This indemnity provision includes
12 indemnity against any claim that may be brought by STEVEN KELLEY, his
13 representatives, agents, or by any attorneys hired or thought to be hired by said
14 persons and companies asserting any claims dependent on the OCCURRENCES as
15 their basis. This Indemnity Agreement shall include without limitation any expense
16 incurred by [defendant] for the investigation of any such claims hereinafter asserted.

17 (Dkt. #127 at 6).

18 Occurrences were defined under Section I of the Indemnity Agreement as:

19 [T]he alleged incident which occurred on or about March 2005 in which [plaintiff]
20 allegedly sustained an abdominal injury while engaging in repairs to the steering gear
21 of the M/V INDEPENDENCE; the alleged accident which occurred on or about
22 July 28, 2005, in which [plaintiff] allegedly sustained an eye injury while fishing
23 aboard the ALASKA PACKER; and any other incident in which [plaintiff] alleges
24 injuries or damages while in the employ of [defendant].

25 *Id.* at 4.

26 In addition, the Indemnity Agreement contained a provision specifically referencing
27 the possibility of a separate lawsuit against defendant. Paragraph 2 of Section II provides:

28 STEVEN KELLEY has notified RELEASEES of his intent to serve as the
Representative of a potential class action lawsuit against [defendant]. KELLEY has
not informed [defendant] of the subject matter, underlying facts, or claims involved
in the referenced class action. The parties agree that, for purposes of determining
whether STEVEN KELLEY may properly serve as a Class Representative in the
referenced class action lawsuit, this Agreement shall be treated as though it were a
final judgment on the merits of the LAWSUIT as of the date of this Agreement. *The
parties agree that they reserve all rights and defenses with respect to the referenced*

¹ The separate lawsuit was litigated in this district court before the Honorable John C. Coughenour. *See* C05-1708JCC.

1 *class action lawsuit* that they would possess as if this were a final judgment on the
2 merits.

3 *Id.* at 5 (emphasis added).

4 Soon after the parties executed a settlement, plaintiff joined eight other plaintiffs in a
5 separate lawsuit brought before this Court on May 14, 2007. The complaint alleged that
6 plaintiffs, who were seamen that sustained injuries aboard vessels owned by several named
7 defendants to this lawsuit, were personally obligated to pay deficiencies on their medical
8 bills due to the fraudulent practices of defendants. This Court dismissed plaintiffs' claims
9 pursuant to Fed. R. Civ. P. 12(b)(1), specifically finding that plaintiffs did not assert an
10 injury-in-fact at the time the complaint was filed and therefore lacked standing to bring a
11 claim. Defendant Trident Seafoods now brings the instant motion seeking reasonable
12 attorneys' fees and costs based on the language of the Indemnity Agreement referenced
13 above.

14 **B. The Language of the Indemnity Agreement Supports Plaintiff's Position**

15 Courts interpret and resolve disputes concerning maritime contracts pursuant to
16 federal law. *See Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 22-23, 125 S.Ct. 385
17 (2004) ("When a contract is a maritime one, and the dispute is not inherently local, federal
18 law controls the contract interpretation"). When interpreting a maritime contract, a court
19 should examine the contract as whole, and look first to the intent of the parties as expressed
20 by the terms of the agreement. *See Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1214
21 (5th Cir. 1986). "Contract terms are to be given their ordinary meaning," and "[w]henever
22 possible, the plain language of the contract should be considered first." *Starrag v. Maersk,*
23 *Inc.*, 486 F.3d 607, 616 (9th Cir. 2007) (quoting *Klamath Water Users Protective Ass'n v.*
24 *Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999)). It is well-established that all terms to a
25 maritime contract should be interpreted without rendering any of them meaningless or
26 superfluous. *See Foster Wheeler Energy Corp. v. An Ning Jiang MV*, 383 F.3d 349, 354
27 (5th Cir. 2004); *Capozziello v. Brasileiro*, 443 F.2d 1155, 1159 (2d. Cir. 1971). Only if the
28 language is ambiguous should a court examine extrinsic evidence and look beyond the

1 written language of the contract. *See Fontenot*, 791 F.2d at 1214.

2 In the instant case, defendant argues that Section V of the Indemnity Agreement
3 prevents plaintiff from initiating any further lawsuits against defendant. Defendant argues
4 that indemnification provisions should be construed broadly, and urges the Court to examine
5 the facts underlying plaintiff's claims. However, the Court finds it unnecessary to analyze
6 the indemnification provision of Section V given the plain language of Section II. This
7 portion unambiguously states that plaintiff never intended to release his right to pursue a
8 class action proceeding. Defendant was clearly on notice of plaintiff's intention to "serve as
9 the Representative of a potential class action lawsuit against [defendant]." (Dkt. #127 at 5).
10 Section II goes on to state that "the parties agree that they reserve all rights and defenses
11 with respect to the referenced class action lawsuit[.]" *Id.* As a result, this Court will not
12 ignore the applicable language of Section II. Contract law requires this Court to interpret
13 contracts as a whole, and to only apply Section V would render Section II meaningless and
14 superfluous.

15 Furthermore, it is not dispositive that plaintiffs were never certified as a class. Under
16 Fed. R. Civ. P. 23(c), "[w]hen a person sues or is sued as a representative of a class, the
17 court must - at an early practicable time - determine by order whether to certify the action as
18 a class action." It was plaintiffs' intention to certify this lawsuit as a class action proceeding
19 (Dkt. #37 at 26-33), but the Court dismissed the case before it could reach that issue. As a
20 result, the fact that plaintiffs in this lawsuit were not certified as a class pursuant to Fed. R.
21 Civ. P. 23 does not preclude the applicability of Section II of the Indemnity Agreement.

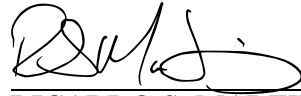
22 **III. CONCLUSION**

23 Having reviewed defendant's motion, plaintiff's response, defendant's reply, the
24 declarations and exhibits attached thereto, and the remainder of the record, the Court hereby
25 finds and Orders:

26 (1) Defendant Trident Seafoods' Motion For Attorney's Fees Re Indemnity
27 Agreement (Dkt. #126) is DENIED.

28 (2) The Clerk shall send a copy of this Order to all counsel of record.

1 DATED this 2nd day of November, 2007.

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4 RICARDO S. MARTINEZ
5 UNITED STATES DISTRICT JUDGE
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